

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS FRANZWA,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of the Social
Security Administration,

Defendant.

ORDER

13-cv-844-jdp

Plaintiff Thomas Franzwa seeks judicial review of a final decision of defendant Carolyn W. Colvin, the Commissioner of Social Security, finding him not disabled within the meaning on the Social Security Act. The court held a hearing on plaintiff's motion for summary judgment on February 11, 2015. For reasons stated more fully at the hearing, the court will grant plaintiff's motion and remand the case to the Commissioner for further proceedings.

The ALJ discounted the opinions of Dr. Lockheart and Dr. Dohlman without building an accurate and logical bridge from the evidence to her conclusion. *See Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001). Dr. Lockheart opined that plaintiff could not perform any overhead lifting, but the ALJ dismissed this limitation as inconsistent with Dr. Lockheart's own physical examination findings. But the ALJ did not identify what findings contradicted the limitation and, in fact, Dr. Lockheart's report appears to be consistent with his conclusion that plaintiff cannot perform overhead reaching. The ALJ dismissed Dr. Dohlman's opinion that plaintiff would need to miss six to eight days each month because of his back pain. As the ALJ acknowledged, plaintiff had severe impairments stemming in part from degenerative disc disease, which was evident on plaintiff's MRI. R. 116, 121. The ALJ found that "Dr. Dohlman's own reports fail to reveal the type of significant clinical and laboratory abnormalities one would

expect if the claimant were in fact disabled.” R. 121. But the ALJ did not specify what evidence of abnormalities was lacking in Dr. Dohlman’s reports. The ALJ cannot discount or disregard Dr. Dohlman’s appraisal of the severity of plaintiff’s symptoms without specifying what kind of evidence is lacking from Dr. Dohlman’s notes. The ALJ also suggested that Dr. Dohlman was biased in favor of plaintiff, but the ALJ did not identify any record evidence of such a bias. The ALJ’s comments suggest that she had de-valued Dr. Dohlman’s opinion *because* he was plaintiff’s treating physician, when this is a factor that would favor giving Dr. Dohlman more weight. In sum, the ALJ did not articulate adequate reasons for discounting Dr. Dohlman’s opinion within the framework prescribed by 20 C.F.R. § 404.1527(c).

On remand, the ALJ must:

- Identify which of Dr. Lockheart’s examination findings conflict with his limitation on plaintiff’s ability to perform overhead reaching, or explain why Dr. Lockheart’s opinion is not otherwise entitled to weight.
- Identify what evidence in the record, if any, contradicts Dr. Dohlman’s opinion such that it is not entitled to controlling weight.
- If Dr. Dohlman’s opinion is not entitled to controlling weight, consider and articulate the pertinent factors in § 1527(c), which in this case should include the treatment history with plaintiff and the consistency with other medical opinions in the record.

This order does not mandate that any opinions be given a particular weight, nor does it mandate a finding of disability.

On remand, the ALJ should also revisit her credibility determination in light of any adjustments to the weight she assigns to the medical opinions in this case. The ALJ should also fully develop the record of plaintiff’s daily activities before using them to discredit plaintiff’s reports of disability. *See, e.g., Lott v. Colvin*, 541 F. App’x 702, 707 (7th Cir. 2013), *as amended* (Oct. 17, 2013).

IT IS ORDERED that the decision of defendant Carolyn W. Colvin, Commissioner of Social Security, denying plaintiff Thomas Franzwa's application for disability benefits is REVERSED AND REMANDED. The clerk of court is directed to enter judgment for plaintiff and close this case.

Entered February 11, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge